IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8197 of 2001
with
SPECIAL CIVIL APPLICATIONS No.8201 of 2001,
8203 of 2001, 8205 of 2001, 8206 of 2001,
8209 of 2001, 8211 of 2001, 8212 of 2001
8213 of 2001 & 8214 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVIN FLUORINE INDUSTRIES

Versus

B.M. SHAH

Appearance:
1. Special Civil Application No. 8197 of 2001
NANAVATI ASSOCIATES for Petitioner
MRS SANGEETA N PAHWA for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/06/2003

COMMON C.A.V. JUDGEMENT

These petitions are filed by a company, Navin Flourine Industries, a unit of Mafatlal Industries Limited, challenging the judgement and awards dated

19.7.2001 passed by the Labour Court, Surat in Reference (LCS) Nos.809 of 1999, 804 of 1999, 814 of 1999, 808 of 1999, 7 of 2000, 812 of 1999, 926 of 1999, 815 of 1999, 813 of 1999 and 810 of 1999.

As the record states, these petitions were filed on 27.8.2001, but thereafter, the matters were adjourned from time to time and it was only on 18.2.2003 that the Court passed the following order in Special Civil Application No.8197 of 2001:

"Rule returnable on 20th March 2003.

In the meanwhile, interim relief in terms of paragraph 32(B). It will be open for the respondent, workman to file an application/ affidavit under section 17B of the Industrial Disputes Act, 1947."

The matters were listed for final hearing on 20.3.2003, but then as the learned advocate for the respondents, Ms.Sangeeta Pahwa filed sick note, the matters could not be taken up for final hearing and were adjourned to 26.3.2003. On 26.3.2003 a request was made that time be granted to enable the respondents-workmen to file an application seeking compliance of the provisions of sec.17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The matters were adjourned to 27.3.2003. As the matters could not be heard on 27.3.2003, the same were kept today, i.e. 28.3.2003. The respondents have filed Civil Application Nos.2235/03, 2236/03, 2237/03, 2239/03, 2240/03, 2241/03, 2242/03, 2243/03, 2244/03 and 2245/03, seeking compliance of the provisions of sec.17-B of the Act. The main matters are already on Board, awaiting final hearing. The learned advocate for the respondents-workmen, Ms.Pahwa, submitted that in view of the decisions of the Supreme Court, these Civil Applications filed seeking compliance of sec.17-B of the Act, be heard giving priority, before the main matters are taken up for final hearing. In support of her contention, she relied upon a judgement of the Apex Court, in the matter of Workmen, represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and others, reported in (2000) 9 SCC 534.

The learned advocate submitted that the Apex Court has laid down a law to the effect that in the event of filing of an application seeking compliance of sec.17-B of the Act, it should be heard before hearing the main matter for final disposal.

Having perused the judgement of the Apex Court, this Court does not want to subscribe to the contention raised by the learned Advocate. In the humble opinion of this Court, the provisions of sec.17-B are made for a definite purpose, which are clear from the language of the section itself, which reads as under:

"17-B. Payment of full wages to workmen pending proceedings in higher courts ---- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employee prefers any proceedings against such award in High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is provided to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

Section 17-B is inserted by Act No.46 of 1982 and it has become effective since 21st August, 1984. The reason for which this section is inserted is apparent. A judicial notice can be taken of the fact that of the two, that is, employer and employee, the employer is mightier while the employee is weak not only economically but in its overall position. It is also not unknown that after adjudication by the Labour Court or the Tribunal in favour of an employee, filing of an appeal before the High Court or a higher forum, is a matter of routine practice and after filing of such an appeal obtaining `interim order' seeking stay against the execution, operation and implementation of the order of the Court of the first instance is also not uncommon. This used to result into leaving the employee high and dry despite an order passed in his favour. It is also a known fact that there was no certainty as to how long the said agony will last as once the appeal is admitted, factor of

uncertainty sets in and, therefore, to overcome that difficulty, the present section is introduced on the Statute Book. The object is to help an employee to subsist and survive.

2. In the present case, the workmen, in whose favour the orders of reinstatement were passed, kept quite in the matters and waited for the employer to file an appeal. The matters remained pending at the admission stage in the High Court for two long years. It is only after the matters are admitted and order of stay is granted that the employees approached the Court insisting that now, an order under sec.17-B of the Act be passed and then and then only, final hearing be taken up. This practice is required to be deprecated in as strong words as possible. In the present case, the judgement and awards is dated 19.7.2001. The petitions are filed on 27.8.2001. The learned advocate for the respondents has not put forth the details of the steps taken by the respondents-workmen for getting the order of reinstatement implemented during these two years. Now that when the Court has admitted the matters, after taking into consideration the error apparent, committed by the learned Judge of the Labour Court, Surat in coming to the conclusion that the respondents were the workmen, and the order granting interim relief was passed reserving the liberty to the workmen to file an application/affidavit under Section 17-B of the Act, insistence on the part of employees is not bona fide.

3. The learned advocate for the respondents next relied upon a judgement in the matter of Management of M/s Praga Tools Ltd. Vs. The Chairman-cum-Presiding Officer & another, reported in 1996 (1) LLJ 748. The learned advocate contended that the Division Bench of the High Court of Andhra Pradesh has laid down that,

> "Power under Article 226 cannot be exercised so as to destroy rights under section 17B -Wages last drawn cannot mean quantum of money received by workman at time of discharge or dismissal --workman will be entitled to receive full wages payable on date of suspension of award of reinstatement .. .."

4. In the present case, there is no question of destroying the rights of the workmen, conferred on them under sec.17-B. The only question, which arises for consideration of this Court, is as to whether when the respondents were not vigilant enough to pray for relief under sec.17-B for long two years, and now when the

matters are fixed for final hearing, can they be allowed to insist for entertaining the application under sec.17-B first in point of time and only thereafter, to proceed with the final hearing of the main matter. In the humble opinion of this Court, this decision has no application to the facts of the present case. The learned advocate further relied upon a judgement of this Court (Coram : H.K. Rathod, J.) in Civil Application No.8363 of 2002 with Civil Application No.8271 of 2001 in Special Civil Application No.5617 of 2001 decided on 11.3.2003. In para-17 of the said judgement, the learned Judge has considered various decisions along with a decision of Karnataka High Court in the matter of Hind Plastic Industries Vs. Labour Court, Bangalore & others, reported in 1993 III LLJ 624. The learned Judge relied upon para-3 of the aforesaid judgement, which reads as under:

"3. It is too late in the day to contend that the burden is on the workman or the dismissed employee who has obtained the award in his favour to prove that he was not gainfully employed since his dismissal/ suspension etc. till the award was made in his favour. Section 17B is a beneficial piece of legislation intended to benefit the workman who shall not suffer the stay of award in his favour by the Labour Court, Tribunal or the Board as the case may be. If the High Court or the Supreme Court tends to grant stay of such an award made by the Court, Tribunal or the Board, it is a duty cast upon the High Courts and the Supreme Court to ensure that during pendency of the litigation before it, either the concerned High Court or the Supreme Court ensures payment of last wages drawn by the workman employee. The benefit of legislation therefore must flow in favour of the workman. The proviso to the section becomes operative by the employer satisfying the Court concerned that the workman had been employed and had been receiving adequate remuneration during any such period or part thereof. The Court concerned must direct that wages shall not be paid by the employer to the workman for the period. In all other case, the payment of last drawn wages during the pendency of the proceedings in the High Court must automatically follow on the affidavit of the workman. Such last wages drawn, the section makes it clear, shall include the maintenance allowance admissible under any rule applicable to the workman subject to only that an

Affidavit must be filed by the workman to that effect.

We therefore, see no justification to interfere with the learned Single Judge's order. Appeal rejected.

.. .. "

5. So far as the principles of law are concerned, there cannot be any quarrel on the same. The intention of the legislature is more than clear in putting the provision of sec.17-B on the statute book. The question is if in a given case, the Court is able to take up final hearing of the matter, is it necessary that before taking up final hearing, an order for compliance of sec.17-B be made on an application filed for the purpose. As is discussed hereinabove, the object of sec.17-B is to see that during pendency of appeal before higher forum against an order of reinstatement issued by the competent court, after first adjudication, the workman is not left high and dry. The legislature never wanted that even if the Court is able to take up final hearing of the matter, the same should be postponed till the application for compliance of sec.17-B is made and an order for compliance of sec.17-B is passed against the employer.

In the present case, the workmen had chosen to sleep over their rights. After the judgement and awards dated 19.7.2001, no action is taken till filing of the present Civil Applications for compliance of sec.17-B. In view of that, this Court has no hesitation in holding that the workmen deliberately did not take any steps for implementation of their rights, which are created in their favour by the awards dated 19th July,2001, which can only be with a view to take undue advantage of the provisions of sec.17-B.

6. The learned advocate for the respondents also made a reference to a judgement of the Apex Court, reported in 1986 Lab. IC 850, but she did not make available a copy of the same. She submitted that the provisions of sec.17-B are mandatory in nature and that the Court has to pass an order for compliance of sec.17-B.

7. The learned advocate for the respondents next relied upon a judgement of the Apex Court in the matter of Dena Bank Vs. Kiritkumar T. Patel, reported in AIR 1998 SC 511. The learned advocate relied upon the observations made by the Supreme Court in para-22, which

reads as under:

"22. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution it may be stated that sec.17B by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in sec.17B and while giving the direction the Court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. (1987 Lab IC 1468) (supra) that in exercise of the power under Articles 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted under sec.17B. The conferment of such a right under sec.17B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution."

This authority has no application to the controversy on hand.

8. There is no doubt that the legislature has placed the provisions of sec.17-B on the statute book with a definite purpose and those provisions are to be followed to achieve that object when the circumstances of the case so warrant. But then, this Court is required to consider as to in the facts and circumstances of the present case any order under sec.17-B is warranted at this stage i.e. when the Court is taking up final hearing of the case. In the humble opinion of this Court, the answer is 'no'. The reason is simple. The object of sec.17-B gathered from any interpretation of the provisions is only to see that the employer does not deprive a workman of the fruits of an order of reinstatement, which is ordered after a full fledged adjudication, by filing an appeal and by obtaining an injunction. This provision is placed

on the statute book because of an unhappy situation prevailing in the courts that the appeals take longer time to get heard and disposed of. The provision can never be pressed into service when the Court is able to take up final hearing of the matter, more so, in the facts of this case. It may be reiterated even at the cost of repetition that after the awards were passed on 13.7.2001, the workmen have not taken any steps to enforce their rights. In February-2003, the matters are admitted by this Court for examining the legality and validity of the judgement and award and taking into consideration the facts of the case, the Court made "Rule returnable on 20th March, 2003". At this stage, Civil Applications are filed praying for directions to comply Section 17-B and though the Court is taking up final hearing of the matters, it is insisted that first the orders be passed in the Civil Applications, which is not warranted.

9. The learned Advocate for the respondents tried to explain the late filing of these Civil Applications, seeking compliance of the provisions of Section 17-B, by submitting that the cause of action for filing these Civil Applications arose only after the Court admitted the petitions on 18th February, 2003 and granted interim relief in terms of paragraph-32(B). The explanation is not acceptable for a simple reason that the awards are dated 19th July, 2001 and even if the petitions are admitted on 18th February, 2003, nothing prevented the respondents from taking necessary steps to get the award implemented. Besides that, what is important is that if the Court is taking up final hearing of the matters, it is not open for the respondents to insist for passing of the orders in the Civil Applications before taking up final hearing of the matters.

10. On merits of the matter, Mr.Nanavati submitted that the learned Judge overlooking the voluminous record has come to the conclusion that the respondents are workmen in the meaning of the term, `workman', defined in Clause (s) of Section-2 of the Industrial Disputes Act, 1947, which reads as under:

> "2(s) 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who

has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person. .. .."

11. The case of the petitioner herein is that the respondents were discharging supervisory functions and they were in the position of departmental heads. Number of documents, copies of which are produced before this Court from pages no.96 to 142, depict various duties discharged by the respondents-workmen as departmental heads. Mr.Nanavati submitted that the learned Judge, approaching the matters in an inaccurate manner, has observed that :

"It is the burden on the establishment to prove that the respondent is not included in the definition of the term, 'workman'."

He submitted that as the learned Judge has approached the matters with an incorrect concept that, `it is the responsibility of the establishment to prove that he is not a workman', the learned Judge has committed an error which warrants interference at the hands of this Court, exercising jurisdiction under Articles 226 and 227 of the Constitution of India. The learned Advocate for the petitioner submitted that when a workman approaches the Labour Court for the reliefs prayed for, it is for him to prove that he is a workman. It is more a question of `correct approach' to the problem because if the approach is not correct, necessarily the conclusion reached by the learned Judge cannot be correct.

12. Mr.Nanavati relied upon a judgement of the Apex Court in the matter of Range Forest Officer v. S.T. Hadimani, reported in AIR 2002 SC 1147 wherein the Apex Court was pleased to observe as under:

"2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August 1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent

had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'industry' or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, (JT 2001 (3) SC 326). In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the Appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. .. .."

Mr.Nanavati, the learned Advocate for the petitioner, submitted that in the present case also, it is the respondents-workmen, who had approached the Labour Court with a case that they are workmen, in reply to which, the management had produced the aforesaid documentary evidence and one Shri Biren Kapadia, exh.73, is examined, who has deposed in detail as to what duties were performed by these respondents-workmen. It is on record that the respondents were having number of workmen working under their control, and they were distributing work to these workmen, giving necessary instructions and were supervising the work of these workmen. It is further on record of the case that it was the duty of the respondents to see that the workmen working under their control do work in a disciplined manner in accordance with the laid down rules, regulations and instructions. In addition to that, the respondents were supposed to work in supervisory capacity only, as they were not

supposed to do any manual or technical work. They had the authority to grant leave to subordinate workmen and issue instructions about Over Time and sanctioning of the Over Time. Mr.Nanavati, the learned Advocate, submitted that all this material is brushed aside by the learned Judge by saying that the petitioner-establishment has not been able to prove that the respondents were discharging all these duties not as `main duties'. The learned Judge was pleased to record a finding to the effect that all these are `incidental duties' of the respondents.

13. Mr.Nanavati, the learned advocate for the establishment, invited the attention of the Court to the settlement arrived at between the petitioner-Company and its employees, a copy of which is produced at Annexure 'D' to the petition. In the said settlement, the respondents are referred to as "Supervisors". Interestingly, the learned advocate for the respondents explained the said settlement saying that the said settlement was accepted by the present respondents only for the purpose of payment. The Court is not able to accept the explanation tendered by the learned Advocate because there cannot be a settlement for accepting payment only de hors the duties.

14. While replying the matter on merits, the learned advocate for the respondents referred to a decision of this Court in the matter of Gujarat Electricity Board, Vidyut Bhavan v. Gujarat Electricity Employees Union & others, reported in 1994(1) GCD 555 (Guj.). The learned advocate referred to this decision in support of her contention that in order to determine whether an employee is a workman or not, the Court has to examine the nature of the work performed, to determine as to whether the same is `supervisory' or `managerial' in nature, as contemplated in Clause (iii) or Clause (iv) of Section 2(s), and if the answer is in the negative, he is to be treated as a workman irrespective of his pay. In the present case, the duties performed by the respondents and the limited powers vested in the respondents are held to be `incidental' and not the `main duties', and on that basis, the learned Judge came to the conclusion that the respondents are to be treated as workmen for all purposes.

15. So far as the proposition of law laid down by the aforesaid judgement is concerned, it is well settled and well accepted. The pay received by an employee is not the decisive criterion to declare him a workman. It is no doubt true that what is required to be seen is the `nature of duties' performed. Therefore, it was all the

more necessary for the Court (the learned Judge) to consider that if the respondents were discharging the aforesaid duties, can they be held to be `workmen'.

16. The learned advocate for the respondents relied upon a judgement of Delhi High Court, in the matter of M/s. Blue Star Limited Vs. N.R. Sharma and others, reported in 1975 (2) LLJ 300, to contend that a finding recorded on the question as to whether the respondent was a workman, is partly a finding of fact and partly a finding on question of law. The learned advocate relied upon para-7 of the judgement, which reads as under:

"The petitioner company did not file any written list of duties of a supervisor. Shri Seth, however, stated generally what were the duties of a supervisor. He did not, however, say that they were the duties of Sharma. The duties of a supervisor, according to Shri Seth, were as follows : (1) to supervise the work of the mechanics and others allotted to him, (2) to check the daily diaries of the work done by them, (3) to sanction causal leave and earned leave to the employees working under him, (4) to sanction the overtime of the employees under him, (5) to appoint a contractor for a particular job and to supervise his work and (6) to maintain liaison with the customers. The documentary and oral evidence on record shows that Sharma performed only one or at the most two of the above duties. He checked the daily diaries of Jitendranath and Ganesh and he maintained liaison with Punjab National Bank acting as the man on the spot for the petitioner company. It is true that he took advances from the company for purchases of material for the repair of the plant and he also took such advances from the Punjab National Bank for the same purpose. There is no evidence at all, however, that he could appoint a contractor for a particular job. In connection with the maintenance and repair of the air condition plant at the Indian Express building it is proved by document that the work was directly given by the petitioner company to Messrs Bhalla and Company. It is only a part of the payment due to Messrs Bhalla and Company that was made by the petitioner company to Sharma who took that money from the company as advance for payment to Messrs Bhalla and Company. There is absolutely no evidence that Sharma had power to grant casual leave or earned leave to any persons working

under him or that he had power to sanction overtime allowance to the persons working under him. In Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen, [1969 II LLJ 670], the question was whether P.K. Gupta was employed in a supervisory capacity. In the last but one paragraph of the judgement, at page 672, column 2 of the report, their Lordships of the Supreme Court observed as follows:

"The only power he could exercise over them was to allocate work between them, to permit them to leave during office hours, and to recommend their leave application. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in charge into that of a supervisory."

Sharma in the present case did not have the power even to allocate the work to Jitendranath and Ganesh. The diaries maintained by them show that they did the same work which Sharma did, namely, the maintenance of the plant. Sharma did not maintain a diary inasmuch as he was a supervisor. From this fact, it is urged for the petitioner that Sharma was doing supervisory work. It becomes important, therefore, to know exactly the significance of the supervisory element in the work of a person within the meaning of S.2(s) of the Act."

It may be noted that in the present case, the learned Judge has not taken trouble to find out as to what duties were performed by the respondents as `main duties' and as `incidental duties' and as to whether on taking into consideration the totality of the same, they can be held to be supervisors.

17. The learned advocate next relied upon a judgement in the matter of Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay, reported in (1985) 3 SCC 371, to contend that, "when an employee has multifarious duties and a question is raised as to whether he is a workman or not", the test the Court must employ in order to determine the question is, "what was the primary/basic or dominant nature of duties for which the person, whose status is under enquiry, was employed"; and, that if an employee is incidentally asked to do some other work, which may not necessarily be in tune with the basic

duties, these additional duties cannot change the character and status of the person concerned. The learned Advocate submitted that in the present case, the learned Judge has recorded a finding to the effect that the duties which are alleged to be that of supervisory nature were only incidental and were not primary or basic duties to be performed by the respondents.

18. As against that, the contention of Mr.Nanavati is that the learned Judge approached the problem in an erroneous manner and instead of asking the applicants before the Labour Court (respondents herein), asked the petitioners to prove that the respondents are not workmen. He further submitted that while doing so, the learned Judge did not take into consideration the voluminous material placed before the Court and came to a conclusion that the respondents are workmen. In the case before the Apex Court, the facts were that the person concerned was mainly performing clerical work and was incidentally performing some supervisory work and in such circumstances, the person was held to be a workman. In the present case, the grievance of the petitioner before this Court is that the learned Judge has approached the problem in an erroneous manner and, therefore, the judgement and awards of the Labour Court are required to be quashed and set aside.

19. The learned Advocate for the respondents next contended that the scope of writ Court in the matter wherein a finding is recorded on a question of fact is very limited and that once the learned Judge of the Labour Court has recorded a finding on the aspect of the respondents being workmen, no interference is called for.

The learned Advocate, Mr.Nanavati, for the petitioner submitted that the judgement and awards of the Labour Court are vitiated on account of the erroneous approach of the learned Judge, which is discussed herein above. The learned Judge has recorded a finding that the respondents are workmen, by holding that the petitioner before this Court is not able to prove otherwise. Mr.Nanavati submitted that the learned Judge has committed this error by not appreciating the voluminous material placed before him. He submitted that in view of the decision of the Apex Court in the matter of Range Forest Officer vs. S.T.Hadimani (supra), the onus lies upon the respondents to prove their case that they are workmen. He submitted that in the facts before the Apex Court, it was the factum of the claimants having worked for 240 days, in the year preceding his termination. He submitted that the Apex Court has held that the onus lies

upon the claimant to show that he had, in fact, worked for 240 days in a year. He submitted that the Apex Court was pleased to observe further that "in absence of proof of receipt of salary or wages or record of appointment, filing of an affidavit by the workman is not sufficient evidence to prove that he had worked for 240 days in the year preceding his termination. He submitted that in the present case, it was for the applicants before the Labour Court to prove that they are workmen. He submitted that in absence of a correct approach to the problem and in absence of correct appreciation of the material placed before the Court, the judgement and awards of the learned Judge of the Labour Court are vitiated and, therefore, interference at the hands of this Court is warranted.

20. Taking into consideration the rival contentions of both the sides, and the fact that the learned Judge of the Labour Court has, without appreciating the material placed on record, recorded a finding on the question of fact, whereby he has failed in his duty, and on perusal of the judgement and awards of the learned Judge, it is found that the learned Judge did not approach to the problem in the manner it is expected, as laid down by the decision of the Apex Court in the matter of Range Forest Officer vs. S.T.Hadimani (supra). It is, therefore, deemed fit that the judgement and awards of the Labour Court be quashed and set aside and the matters be remanded to the Labour Court to decide the same afresh. Order accordingly.

All these petitions are allowed. All the matters are remanded to the Labour Court for deciding the same afresh. Taking into consideration the fact that the matters are of the year 1999, it is deemed fit to direct the Labour Court to give priority to these matters and decide as expeditiously as possible, preferably within six months from the date of receipt of this order. Rule is made absolute. No order as to costs.

(Ravi R.Tripathi, J.)
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